

Washington State Liquor Control Board

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LEGAL DIVISION

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WASHINGTON STATE
LIQUOR CONTROL BOARD

From: Doug Alexander - Information Officer

Subject: December 1, 1976 Meeting of Representatives of Brewers and Wholesalers With Board Staff to Discuss Proposed Amendments to Beer and Wine Regulations

Those in attendance at the meeting were as follows:

Leroy Hittle, Board Member

Arthur Mickey, Assistant Attorney General

Bob Hilson, Supervisor, Manufacturers, Importers and Wholesalers Division

Jim Halstrom, Assistant Supervisor, Manufacturers, Importers and Wholesalers Division

Doug Alexander, Board Secretary

Dale Shintaffer, Sound Beverage Distributors, Bellingham

Ron Murphy, U.S. Brewers Association, Seattle

John Huddleson, Beer and Wine Wholesalers Association, Seattle

Tom Hopper, South Shore Distributors, Olympia

Joe Krause, Skagit Distributing Company, Burlington

Ken Graham, Bell Rainier, Bellingham

Lou Crompe, State Distributing Company, Tacoma

Bob Hilson, Supervisor, Manufacturers, Importers and Wholesalers Division (MIW), explained attachment A to the public notice filed to announce a public hearing on December 14, 1976. At a public hearing, the Board will consider amendments to WAC 314-20-100, WAC 314-20-105, WAC 314-24-190, WAC 314-24-200. Hilson explained that the regulation, as written, contain ambiguous language which creates enforcement problems.

Resp to Costco RFP
3278

PLAINTIFF'S
EXHIBIT

CASE
NO. CV04-0360P

EXHIBIT
NO. 053

The MIW needs clarifying language according to Hilson. References to rule (124(4)) must be changed to RCW 19.90, to conform to the new advertising regulations. The present language is in the regulations because of pressure from brewers and wholesalers, Hilson said. For example, wholesaler A on an individual basis, argues that the regulations permit him a free rein; however, when competitor B demands a free rein, wholesaler A argues that the competitor should be curbed. Hilson said wholesalers cannot have it both ways. Fairness in enforcement requires clear guidelines, to get away from having to make arbitrary decisions.

Ken Graham, Bell Rainier, Bellingham, President of the Beer and Wine Wholesalers Association, complained that the "cost of doing business" was a loose definition. Hilson replied that the definition in RCW 19.90 applied to the entire business community and seemed to create no problem elsewhere.

Hilson also said some wholesalers were receiving what amounted to post-offs on wine and were not passing a savings on to the retailer.

Leroy Hittle, Board Member, said at the restaurant association's conference in Richland, the Board was accused of taking post-offs and not allowing others to do so. He pointed out the facts: That the Board was taking advantage of post-offs on spirits and passing the savings along to the customer. The Board was not taking post-offs on wines, not because it couldn't do so legally, but out of a sense of fair play, because the beer and wine wholesalers could not by regulation, take post-offs. Hittle said that this proposal to change the regulations was the wholesalers opportunity to legitimize post-offs in the Washington beer and wine industry.

John Huddleson, Executive Secretary for the Beer and Wine Wholesalers Association, complained that "post-off" was a poorly defined term and agreed that a more precise definition would be useful.

Hittle asked, "Do you want post-offs?" He said the Board has been criticized for unfair play; now is the wholesaler's opportunity to go on the record either for or against post-offs.

Shintaffer said post-offs were valuable in a close-out.

Hittle said price reductions on close-outs are permitted now. The Board is concerned with post-offs; i.e., discounts offered by suppliers. "Do the wholesalers want them or not?"

Shintaffer said he wished the Board had not asked the question.

Graham suggested that the Board could stop post-offs at the supplier level.

Hilson said post-offs were applied nation-wide; the Washington State Liquor Control Board has no control over what the supplier can do in another state. He asked how wholesalers presently handle post-offs.

Graham said he was governed by FOB. He passed the savings along.

Joe Krause, Skagit Distributing Company, Burlington, said he pocketed the extra profit from post-offs. He said he didn't see the value of posting a price change and 30 days later posting another change.

Hittle said his point was made. Post-offs are being made. Some do and some do not pass these along. He asked again, do you want it standardized by regulation or not?

Jim Halstrom, Assistant Supervisor, Manufacturers, Importers and Wholesalers Division, defined post-off as a price reduction for 30 to 60 days.

Huddleson said other states allow up to 180 days. Hilson added, twice a year, we agree on the definition and all understand it.

Graham said the wholesaler's problem is that he doesn't know when the post-off is coming. The price sheet arrives from the supplier with a different price and no indication that it is a post-off.

Hittle said it is up to the wholesaler to work out a notification system with the supplier. The problem cannot be controlled from Olympia, because post-offs are offered on a national basis.

Graham asked, under the Des Moines Warranty, do suppliers sell at different levels?

Arthur Mickey, Assistant Attorney General, explained the operation of the Des Moines Warranty.

Hittle questioned the group again, "Do you or don't you want it? We react to criticism." Hilson observed that post-offs were part of the industry practice in California.

Hittle asked Huddleson how many beer and wine wholesalers were represented by the Washington Beer and Wine Wholesalers Association.

Huddleson said, "All but two." There followed a discussion on who could speak for all wholesalers on the question of post-offs.

Hittle noted that there seemed to be a division among the wholesalers and asked again, "Do you or don't you want post-offs. Give me a letter?"

Graham said the question would have to be taken back to the membership.

Hittle said the association did not have to take the question to the membership; the association executive board could act. It was optional, but he asked that the association let the Board know.

Tom Hopper, South Shore Distributors, Olympia, asked if the proposed regulations would require the wholesalers to indicate on a posting, if it was a post-off, as it is now required to do on close-outs. Hilson said that was the intent of the proposed change.

Graham said he was beginning to understand the Board's feeling now; it was a public relations problem.

Hittle explained that the Board takes post-offs on spirits. He said "If you (wholesalers) want to go for wine, we will too." He explained that the Board does not take discounts on wines, because the wholesalers cannot.

Shintaffer said he thought, "we are opening a Pandora's box."

Hittle responded, "Send us a letter, if you're opposed. Take us off the hook."

Hilson asked that the wholesalers define a post-off. Hittle added, "Not to run for 180 days, for no more than 60 days."

Shintaffer asked, "What is the brewer's feeling?"

Ron Murphy, U.S. Brewers Association, said, when the regulations against post-offs were adopted there was unanimous support by brewers to oppose post-offs. He said that there is now a division among the brewers. Some want the flexibility of being able to offer post-offs. Murphy said, if it came to an issue, each brewer would have to take his own position. Murphy guessed that the local brewers would want no change, seeing the prohibition against post-offs as a stabilizing factor in the local market; national brewers would want to open the market up with post-offs.

Hittle reminded Murphy that the brewers might face a conspiracy problem if they collaborated on the issue of post-offs.

Murphy replied that during a similar consideration in Oregon, he was instructed to take no position. Individual brewers could oppose or support post-offs. He didn't know how they would react.

Hilson questioned whether brewers had to be consistent, between their position when the regulation was adopted and today.

Mickey recalled the argument at the time language in the present regulation was adopted. He said brewers advanced the language with the support of the wholesalers, to protect themselves (brewers and wholesaler) against the retailers.

Hilson explained to Murphy that the problem develops between his office and the wholesalers over what the latter can do. Hilson said there are so many argumentative points when it comes to pricing.

Shintaffer explained that a brewer offers a price differential between a case of six-pack and a case of loose-pack. Hittle added, "making a difference in the price per ounce?" Halstrom added, "What do you mean by uniformity."

Hittle asked if it was the intent of the proposed regulation change to open a free market? Hilson answered, "yes."

Both Murphy and Huddleson, although they represented their associations at the time the post-off language was inserted, said they could not remember why the prohibition against the post-off was so important at that time.

Mickey added that the language was put in by Henry Ivers.

Hittle explained that the Board is trying to get away from too much regulation.

Huddleson asked, "shall we put the question to the membership?"

Hilson said the disruptive pricing practice language on page 6 of attachment A was Murphy's language.

Murphy said he couldn't remember, but the language must have been tied to post-offs.

Hilson said there are some who ask, why not just cut out all the protective regulations and let the strong survive?

Graham said he saw that his association had an internal PR problem. Hittle agreed, saying also that the statement was made at the restaurant association meeting that "the Board requires wholesalers to mark up 15 percent on wine." Graham and Shintaffer agreed to take the matter up with their membership and appraise them of the facts.

In summary for the Board, Hittle said that this is an era of deregulation. If it is not needed, get rid of it. The Board is just trying to comply with the governor's direction.

Graham said, if the Board was receiving criticism, it did not come from his association. Shintaffer added that communications with the Board was the best in his experience, which goes back a long way.

Hilson concluded, "we are trying to improve our regulations and our communications with the industry."

Before Hilson ended the meeting, Krause added that wholesalers need "burn out" guidance. Graham concurred. A clarification of policy in letter form to wholesalers and enforcement officers would suffice, he said.

Hilson agreed to do it.

DG:slg

cc: Board Member Hittle
Board Member Eldridge
Bob Hilson
Jim Halstrom
Art Mickey